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IN THE

Supreme Court of the United States

October Term, 1969

No. 636

THE CITY OF NEWARK, a municipal corporation of the State of New Jersey,

Petitioner,

vs.

THE PORT OF NEW YORK AUTHORITY, a body corporate and politic, created by Compact between the States of New Jersey and New York,

THE ESSEX COUNTY BOARD OF TAXATION,

and

THE TOWN OF BELLEVILLE, *et als.,*

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW JERSEY

BRIEF FOR RESPONDENT, THE PORT OF NEW YORK AUTHORITY, IN OPPOSITION

SIDNEY GOLDSTEIN,
General Counsel of, and
Attorney for, Respondent,
THE PORT OF NEW YORK AUTHORITY
111 Eighth Avenue
New York, New York 10011

FRANCIS A. MULHERN,
New Jersey Solicitor.

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The City of Newark is petitioning this Court for a writ of certiorari to review the decision of the New Jersey Supreme Court officially reported at 54 N. J. 171 and unofficially reported at 254 A. 2d 513. The City claims that the following question should be reviewed: "Are the uses of properties at Port Newark operated by the Port Authority

under its lease with Newark * * * exempt from taxation under interstate compacts, represented by N. J. S.-A. 32:1-1 *et seq.*, 32:1-25 *et seq.*, 32:1-144 *et seq.* and 32:1-35.28 *et seq.*?" (Petition, p. 3)

The petition is lacking in merit simply because the New Jersey Supreme Court did not hold, as petitioner's question implies, that Port Newark properties are exempt from taxation under the interstate compacts to which the City refers. Rather, the New Jersey Supreme Court held that the Port Newark Marine Terminal is exempt from taxation under New Jersey's General Tax Exemption Act R. S. 54:4-3.3, as publicly owned property devoted to a public purpose. That Act, with certain exceptions not here germane, exempts from real estate taxation all

> "property of the state of New Jersey; and the property of the respective counties, school districts and taxing districts used for public purposes * * *."

New Jersey courts had previously determined that this statutory provision applies to municipally-owned property. *Hanover Township* v. *Town of Morristown*, 4 N. J. Super. 22, 66 A. 2d 187 (App. Div. 1949); *Jersey City* v. *Blum*, 101 N. J. L. 93, 127 Atl. 214 (E & A, 1924). The Port Newark Marine Terminal is owned by the City but leased to the Port Authority pursuant to interstate compacts which authorize the Port Authority to operate marine terminals. What the New Jersey Supreme Court ruled was that since Port Newark properties, all of which are City owned, were being devoted to statutorily authorized uses, the properties were exempted from taxation under the above quoted General Tax Exemption Act as municipally-owned properties "used for public purposes."

The interstate compacts are relevant only insofar as they contain the legislative authorization for Port Authority operation of certain municipally-owned marine terminals. That they were not the statutory basis on which

Port Newark was held exempt from taxation is clear from the following statements by the New Jersey Supreme Court: "Although the history and contemporaneous construction of the marine terminal act (L. 1947, c. 44; R. S. 32:1-35.28 et seq.) strongly support the conclusion that the Legislature contemplated tax exemption of the Port Newark properties devoted to marine terminal purposes, *reference must be made to R. S. 54:4-3.3, N. J. S. A.*, [New Jersey's General Tax Exemption Act] *for express authority for the exemption*" (emphasis added, Petition, p. 16a) and that "[a]ll in all we find that the properties at the terminal were without exception used for statutorily authorized purposes, were tax exempt as publicly-owned property devoted to public purposes, and that the Law Division's judgment must be modified accordingly." (Petition, p. 28a) In other words, the precise statutory ground on which the New Jersey Supreme Court held that the properties at Port Newark were tax exempt was R. S. 54:4-3.3, New Jersey's General Tax Exemption Act.

That petitioner raises no Federal question, let alone an important Federal question, is evident as well from the four "Supporting Precedents" on which its petition relies as the "Reasons for Granting the Writ". (Petition, p. 9)

Thus, the first case which petitioner cites, *Town of Harrison* v. *County of Westchester*, 13 N. Y. 2d 258, 196 N. E. 2d 240 (1963), involved the question of whether certain hangars at a county-owned airport were being employed "for a public use" within the meaning of New York's Real Property Tax Law, New York's equivalent to New Jersey's General Tax Exemption Act. In determining this issue the New York Court of Appeals relied exclusively on State court decisions involving solely questions of State law. Indeed, the court expressly distinguished the meaning of the phrase "public use" as it appears in the State's Real Property Tax Law from the use of the phrase in the 5th Amendment with reference to condemnation.

The second case cited by petitioner, *In re Township of Moon*, 387 Pa. 144, 127 A. 2d 361 (1956),[1] concerned the interpretation to be accorded State legislation which exempts from taxation publicly owned property "used for public purposes." The opinion of the Pennsylvania Supreme Court neither cites, nor refers to, a single decision of this Court, any other Federal court or any principle or rule of Federal law. The Pennsylvania Supreme Court limited its citation of authorities to State court decisions involving solely questions of State law.

The third case cited by petitioner, *Gloucester Ice & Cold Storage Co.* v. *Assessors of Gloucester*, 337 Mass. 23, 147 N. E. 2d 820, 822 (1958), involved the question of who should bear the ultimate burden of real property taxation when land owned by the Commonwealth but "subleased to Cold Storage is * * * used for other than public purposes." Here again, in deciding this issue, the opinion of the highest court of the State makes no reference to any decision by this Court, any other Federal court or to any principle or rule of Federal law. The Massachusetts Supreme Judicial Court limited its citation of authorities to State court decisions involving solely questions of State law.

At issue in the fourth and final case cited by petitioner, *City of Cleveland* v. *Perk*, 2 Ohio St. 2d 173, 207 N. E. 2d 556 (1965), was whether portions of a municipal airport were being used exclusively for a public purpose within the meaning of a certain provision of Ohio's revised code. Once more, the highest court of the State reached its determination without reference to a single decision by this Court, any other Federal court or to any principle or rule

[1] Petitioners reliance upon this case is misplaced. There was a very strong dissent in *Moon*, and, in 1967, the Pennsylvania Supreme Court, in an opinion which petitioner fails to mention, held tax exempt almost all of the very same airport properties which that court had, in *Moon*, held taxable. *Appeals of County of Allegheny*, 425 Pa. 578, 229 A. 2d 890.

of Federal law. The Ohio Supreme Court limited its citation of authorities to a single State court decision which was concerned solely with principles of State law.

In view of the above, the inescapable conclusion is that the petitioner has utterly failed to raise before this Court a question of Federal law, let alone an important question of Federal law as petitioner, without citation of any authority, cavalierly asserts.

WHEREFORE, we respectfully submit that this Court should deny petitioner's prayer that a writ of certiorari be granted to review the decision of the New Jersey Supreme Court in the instant litigation.

Respectfully submitted,

SIDNEY GOLDSTEIN,
General Counsel of, and
Attorney for, Respondent,
THE PORT OF NEW YORK AUTHORITY,
111 Eighth Avenue,
New York, New York 10011.

FRANCIS A. MULHERN,
New Jersey Solicitor.